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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re H.T. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.H.,

Defendant and Appellant.

D075413

(Super. Ct. No. J515939B-C)

APPEAL from orders of the Superior Court of San Diego County, Michael J.

Imhoff, Judge. Affirmed.

Suzanne M. Davidson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County
Counsel, and Jesica N. Fellman, Deputy County Counsel, for Plaintiff and Respondent.

K.H. (Mother) appeals from orders of the juvenile court limiting her educational rights to her children, H.T. and A.T., and appointing their foster parents to make educational decisions. Mother asserts that the juvenile court abused its discretion by limiting her rights in a manner that exceeded what was necessary to protect the children. We find no abuse of discretion and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

This is Mother's third appeal in this case. We have previously set forth the circumstances leading to the removal of H.T. and A.T. from Mother's care in some detail and limit our discussion of the facts to those pertinent to the present appeal. (See *In re H.T.* (Sept. 24, 2018, D073771) [nonpub. opn.].)

Initial Removal

The children were originally removed from Mother's care in February 2017. From the outset of the case, Mother has had a contentious relationship with the San Diego County Health and Human Services Agency (the Agency), the children's foster parents, and others involved in the care of the children. She has refused to authorize developmental assessments or medical treatments for the children, left a shelter over disagreements with staff, and was terminated from a parenting program after she became involved in an altercation at the facility while the children were present. Mother told the Agency that authority was a "trigger" for her. The Agency noted that Mother's defensiveness prevented her from acknowledging her role in the removal of the children or her failure to make progress in her case plan.

Conflicts Over Medical Care

Mother routinely engaged in conflict regarding medical care for the children. In July 2017, H.T. fell and broke her arm while visiting with her court-appointed special advocate (CASA). Mother questioned H.T. at the hospital, insisted that the foster mother had been present when H.T. fell, and implied that H.T. was concealing the true cause of her injury, telling H.T. that she needed to tell the truth. The CASA called and explained that she was with the children at a park, without the foster mother, when the fall occurred, but Mother persisted in questioning H.T.

Mother subsequently demanded to be present at all of the children's medical appointments, but then failed to attend several, causing them to be cancelled. When she did attend, she frequently cursed and yelled at the medical providers and staff in front of the children. As a result, in September 2017, the juvenile court temporarily suspended Mother's participation in the children's medical and dental appointments.

Behavioral and Educational Concerns

Both of the children were enrolled in early care and education services due to a number of behavioral concerns, including inability to self-soothe, extreme/lack of emotions, anxiousness, and eating or sleeping issues. A.T. attended a preschool program during the 2017-2018 school year. The school raised a number of concerns regarding his aggressive behaviors. His teacher noted in a letter that A.T. exhibited anxiety, sudden mood changes, aggression such as hitting, fighting and biting, daily temper tantrums, signs of distress while working with other children, and impulsive behavior. She noticed that some of the behaviors presented after visitation with Mother.

The foster parents worked with therapists for both children to address these concerns. In late 2017, they requested de facto parent status, based in part on their unique knowledge of the children's trauma-related behaviors and therapy. Mother opposed the request and argued that the foster parents had purposefully antagonized her and disregarded her wishes concerning care of the children. The foster parents denied these allegations. The juvenile court found the foster parents to be more credible than Mother and granted them de facto parent status in February 2018.¹

In April, the Agency reported that H.T. was in kindergarten and doing well, with no concerns regarding her participation or behavior in class. However, the foster mother reported that both H.T. and A.T. were exhibiting aggressive behaviors at home, particularly after visits and calls with Mother. In addition, H.T. had tantrums and would sometimes hide under the table to cry.

12-Month Review Hearing

Despite these issues, Mother's visits were going well, and she began making progress in her own therapy. Accordingly, at the 12-month review hearing in April, the Agency recommended an additional six months of reunification services and suggested that the children could potentially be returned to Mother's care as early as June or July.

¹ Mother appealed, and this court affirmed the orders. (See *In re H.T.*, *supra*, D073771 [nonpub. opn.])

Request to Change Court Orders

Unfortunately, the Agency changed its recommendations shortly thereafter. During an extended visit with Mother in June, then four-year-old A.T. sustained burns to his cheek and buttocks while using a hair dryer to dry himself off after a bath. In addition, the children reported that they had spent the visit "in the mountains." Mother had not obtained permission to take the children out of town or to stay at a hotel. Upon further investigation, the Agency learned that Mother was no longer living in the home that the Agency had approved for visits.

A couple of weeks later, Mother was arrested after the police caught her sitting in a car, allegedly acting as a lookout, while two other individuals attempted to break into a water refill station. The police found two bags of methamphetamine in Mother's bra and drug paraphernalia, including a used pipe in the car. Mother denied any involvement in the burglary and claimed that she was holding the methamphetamine for someone else.

The Agency social worker contacted Mother about the arrest and informed her that visits would revert to being supervised. The social worker scheduled a face-to-face meeting with Mother for the following day, July 13, 2018, but Mother failed to attend the meeting. The social worker called Mother and informed her over the phone that the Agency was going to recommend that the juvenile court terminate her reunification services.

Mother had a supervised visit a few days later and, toward the end of the visit, told the children that "the social worker was taking the visits away." Both the social worker and a therapist who were present at the visit to support the family tried to redirect the

conversation, but Mother persisted and became increasingly irate. The children began to cry. At that point, the social worker announced that the visit was over and got up to help the children pack up the food that they were eating. The social worker picked up a banana split that Mother had given to H.T., but Mother took it from the social worker and handed it back to H.T., who threw it on the ground. Mother picked up the banana split and squeezed it onto the social workers hand. She then knocked over a cup of water on the table, in the direction of the social worker's notebook. A.T. threw the cup of water that he was holding at the social worker's face. Later, when the social worker tried to step between Mother and the children, Mother grabbed her arm hard enough to leave a bruise and said, "don't stand in my fucking way."

The following day, the foster mother reported that both children had regressed and that A.T. had been kicked out of camp for hitting staff members and other children.

On July 26, 2018, the Agency filed a request to change court orders, pursuant to Welfare and Institutions Code² section 388. The Agency asked the court to return Mother to supervised visitation, to terminate her reunification services, and to set a section 366.26 permanency hearing. In an addendum report filed the same day, the Agency requested that the court also limit Mother's educational and medical rights.

The juvenile court found that the Agency had made a prima facie showing, ordered an evidentiary hearing, and ordered that Mother's visits be supervised in the interim. The court found that Mother had not been given sufficient notice for the court to

² All further statutory references are to the Welfare and Institutions Code.

limit her educational rights at that time, but noted that the supervised visitation order took priority and that it would be a violation of the order if Mother were to interact with the children in any way at school without approved supervision, even if she was there to meet with school personnel.

Continued Behavioral Concerns at School

A.T. began attending kindergarten at a new school in August and continued to struggle. The school reported a number of behavioral issues, including throwing chairs and other items, jumping on chairs, tearing up books, throwing tantrums, yelling, and fighting. The school and A.T.'s therapist proposed assessing him for additional support in the classroom, but Mother was unwilling to consent to any further assessments. She said that the children had been assessed and pushed since being taken away from her, that they just needed everyone to stop pushing them, and that the school had contributed to the problems.

The school asked the foster mother to sit with A.T. in the classroom. When she did so, he had a much better day, so she agreed to continue sitting with him each day. The social worker expressed concern that this was not a sustainable solution, that A.T. needed an individualized educational plan (IEP) if this was the sort of support that he required, and that it was unclear what the path forward would be if Mother refused to consent to any further assessments. A.T.'s therapist believed that Mother was trying to do what she thought was best for A.T., but also expressed concern that this was a time sensitive issue and that A.T. was learning a terrible lesson about his ability to succeed in school.

The court held a contested hearing on the section 388 motion on October 3, 2018. Mother asked to continue all issues to the 18-month review hearing, but the Agency requested an interim order on the educational rights, given the pressing need to move forward with assessments for A.T. After further discussion with the court, and facing an order limiting her educational rights altogether, Mother agreed to the assessments. The court deferred the request to limit her educational rights but ordered that the parties return immediately in the event that Mother contested any of the interventions recommended following the assessment. When the school asked Mother to sign the request for assessment paperwork the following day, Mother refused to sign at that time, stating that she needed time to read the documents.

Limitation of Mother's Educational Rights

On November 19, 2018, the court held a combined contested 18-month review and section 388 evidentiary hearing. Mother attended by telephone because she had moved out of the county and had transportation issues. In an addendum report filed the same day, the Agency reported that A.T. continued to be disruptive in class. The assessment had not yet been completed and A.T. was at risk of being expelled. The foster mother was still sitting in the classroom with A.T. on a daily basis and the school principal reported that the foster mother was a strong support system for him. The Agency maintained its request that the juvenile court limit Mother's educational rights as to both children.

The juvenile court ordered supervised visitation for Mother, terminated reunification services, and set a permanency hearing. The court further stated that it

would "incorporate by reference the balance of the recommendations and the review report, making all findings by clear and convincing evidence." The court did not hear argument or directly address Mother's educational rights at the hearing but, in its written order, it limited Mother's educational rights and appointed the CASA to make educational decisions for the children.

On December 17, 2018, the court held a special hearing to clarify the record regarding the status of Mother's educational rights. Mother again attended by phone. Mother's counsel asserted that Mother had signed the paperwork authorizing the assessments, per the court's previous orders, the assessments were ongoing and, Mother was continuing to cooperate with the school and with a counsel the court had appointed to represent A.T. with respect to his educational rights. Mother's counsel conceded that it was possible that Mother would disagree with the recommendations resulting from the assessment, but argued that any limitation of her educational rights before that occurred, would be preemptive and unnecessary.

Counsel for the minors indicated that A.T. had been suspended from school the previous week and that there was an IEP meeting scheduled to take place in a few days. She stated that the foster mother was involved on a daily basis, expressed concern that decisions regarding services would have to be made quickly once the assessments were completed and, accordingly, supported the Agency's recommendation to limit Mother's educational rights and appoint the foster parents as the educational decision makers. The CASA agreed with minor's counsel.

The court stated that it had intended to limit Mother's educational rights at the previous hearing, explained that the emphasis of the case had shifted toward permanency when it terminated Mother's reunification services, and found that the de facto parents were in the best position to make educational decisions for the children, particularly given the fluidity of A.T.'s situation. The court therefore limited Mother's educational rights by giving the foster parents the exclusive authority to make educational decisions for the children.

Mother appeals.³

DISCUSSION

I. *Relevant Legal Principles*

"Parents have a constitutionally protected liberty interest in directing their children's education." (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1276 (*R.W.*)). When a child becomes a dependent of the juvenile court, however, section 361 permits the court to place limitations on a parent's right to make educational decisions for the child.

(§ 361, subd. (a)(1); *R.W.*, at p. 1276.)

"If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise

³ While this appeal was pending, the Agency filed a request that we take judicial notice of subsequent orders terminating Mother's parental rights and a motion to dismiss the appeal as moot. We take judicial notice of the orders but conclude that this appeal is not moot because Mother has since filed a separate appeal from those orders, such that they are not yet final. (See Evid. Code, §§ 452, 459 [permitting judicial notice of state court records]; *In re N.S.* (2016) 245 Cal.App.4th 53, 60 [appeal is not moot where relief could conceivably be granted].) We therefore deny the Agency's motion to dismiss.

the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited." (§ 366.1, subd. (e).) If the Agency recommends that the juvenile court limit the parent's educational rights, and the juvenile court accepts the recommendation, "the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent." (§ 361, subd. (a)(1).) "Any limitation[s] on the right of the parent . . . to make educational or developmental services decisions for the child . . . may not exceed those necessary to protect the child." (*Ibid.*)

We review orders of the juvenile court limiting a parent's right to make educational decisions for an abuse of discretion, "bearing in mind '[t]he focus of dependency proceedings is on the child, not the parent.' " (*R.W., supra*, 172 Cal.App.4th at p. 1277; *In re D.C.* (2015) 243 Cal.App.4th 41, 58 (*D.C.*).)

II. Analysis

Mother contends that the juvenile court abused its discretion by placing limitations on her educational rights that exceed those necessary to protect the children. We disagree.

From the outset of this case, Mother refused developmental assessments and medical treatment for both children, forcing the Agency to involve the juvenile court to establish a treatment order. Throughout its pendency, Mother continually demonstrated opposition to the recommendations of the Agency, foster parents, and other care providers, particularly with respect to the medical or educational needs of the children.

More recently, Mother's oppositional stance has resulted in severe negative impacts with respect to A.T.'s education. When A.T. began displaying increasingly extreme behaviors that put him at risk of suspension or even expulsion from school, Mother refused to consent to assessments recommended by his school. The Agency was forced to involve the juvenile court to gain Mother's consent and even then, she said that she needed time to read the paperwork and continued to cause delays. As the juvenile court noted, A.T. was suffering immensely and the delays in getting him the support he needed only exacerbated that suffering. While the results of the assessment were not yet available at the time the juvenile court limited Mother's educational rights, the court's order was necessary to protect A.T. from further harm given Mother's well-documented pattern of oppositional behavior and the associated likelihood that she would continue to oppose any recommended interventions. (See § 361, subd. (a)(1); *R.W.*, *supra*, 172 Cal.App.4th at p. 1277 [limitation necessary to protect dependent where window of opportunity to address therapeutic needs was closing].)

Mother contends that the limitations the juvenile court placed on her educational rights exceed those necessary to protect A.T. and suggests that the court could have allowed her to remain informed and to attend any educational and developmental service meetings. As an initial matter, nothing in the court's order precludes the foster parents from providing information to Mother. However, Mother has a well-documented history of aggressive behaviors against the Agency and various care providers. Such behaviors could impede the ability of others to discuss the available resources and best solutions for A.T. Given this history, Mother's most recent refusal to allow assessments and the need

to protect A.T., we conclude that the juvenile court's broad limitation of Mother's educational rights, giving the foster parents the exclusive authority to make educational decisions for the children, was necessary. (See *R.W.*, *supra*, 172 Cal.App.4th at p. 1277.) Moreover, if the court had *required* Mother's attendance at educational services meetings, Mother would have been able to delay the process by simply refusing to attend, as she had previously done with medical visits.

With respect to H.T., specifically, Mother contends that the limitation of her educational rights was unnecessary because H.T. is doing well in school and is not causing any of the same concerns as A.T. However, H.T. was exhibiting similar trauma-related behaviors at home and was receiving therapy to address those issues. In view of Mother's demonstrated history of defiance with regard to decisions concerning the care of both children, there is no reason to believe that Mother would be any more cooperative with the school or with the foster parents if issues were to arise concerning H.T.'s education or her behavior at school. Indeed, early in the case, H.T.'s school contacted the Agency to discuss a concerning message that Mother had left for the principal. Thus, while H.T. was not currently experiencing difficulties with respect to her education, many of the same risk factors were present. It was not necessary for the court to wait until H.T. was actually harmed before protecting her from those risks. (See *D.C.*, *supra*, 243 Cal.App.4th at p. 58 [parent harassing school officials at one child's school sufficient ground to limit educational rights as to other children as well].)

Mother next asserts that the juvenile court improperly considered the fact that she lived out of the county and had transportation issues in limiting her educational rights.

While we agree with Mother that she could have participated in any necessary meetings by telephone, just as she did for the court hearing, this fact does not change our analysis. The more pressing issue is Mother's continued resistance and refusal to cooperate with either the school or the foster parents, discussed *ante*. Requiring Mother's participation in educational meetings would have presented all of the same issues, regardless of whether she participated by telephone or in person.

Finally, Mother argues that she had only her children's best interests in mind and that she had reason to be concerned because the Agency had previously withheld information from her regarding an incident in which A.T. allegedly behaved in a sexually inappropriate manner at school. The juvenile court shared Mother's concern in this regard and cautioned the Agency to revisit their protocol. However, there is no indication that Mother would have cooperated more fully if this incident had not occurred. To the contrary, Mother had opposed necessary medical and educational assessments from the outset of the case, long before she became aware of the Agency's failure to inform her about this particular incident. Moreover, the issue that we must decide is whether the limitations were necessary to protect the children, not the extent to which Mother's opposition to the Agency was reasonable. (See *R.W.*, *supra*, 172 Cal.App.4th at p. 1278.) Thus, while we agree with the juvenile court that Mother was justified in her frustration with the handling of this incident, we do not believe that the Agency's failure to inform

Mother about this incident justifies Mother's refusal to cooperate in making necessary educational decisions for the children.⁴

We therefore conclude that the juvenile court did not abuse its discretion in limiting Mother's educational rights or in appointing the foster parents to make educational decisions for A.T. and H.T.

DISPOSITION

The orders are affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.

⁴ Mother also asserts, for the first time in her reply brief, that her concerns were justified because the foster mother subjected the children to dental procedures without Mother's knowledge or approval. The record does not support Mother's contentions. Regardless, we are equally unpersuaded that the dispute over A.T.'s dental care is relevant to the issue before us.